

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

-----X
WAI-WAI CHOI AS PARENT AND NATURAL
GUARDIAN OF W [REDACTED] and WAI-WAI CHOI
INDIVIDUALLY,

Plaintiff,

- against -

THE CITY OF NEW YORK, NEW YORK CITY POLICE
DEPARTMENT, VINCENT LEE and KARIN MARTINEZ,
Defendants.
-----X

**AMENDED
VERIFIED COMPLAINT**

Index No.: 155821/2012

Date Purchase: 8/28/12

Plaintiffs, by their attorneys, Caesar & Napoli, complaining of the Defendants,
respectfully alleges, upon information and belief:

AS AND FOR A FIRST CAUSE OF ACTION

ON BEHALF OF INFANT PLAINTIFF W [REDACTED] C [REDACTED]

1. At all times herein mentioned, Plaintiffs were, and still are residents of the County of New York, State of New York.
2. At all times hereinafter mentioned, defendant, **CITY OF NEW YORK** was and still is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York, and the public employer of the subject police officers.
3. Defendant **VINCENT LEE**, at all relevant time, was a police officer and/or employee of the **NEW YORK CITY POLICE DEPARTMENT**.
4. Defendant **KARIN MARTINEZ**, at all relevant time, was a police officer and/or employee of the **NEW YORK CITY POLICE DEPARTMENT**.
5. On August 1, 2011, the plaintiffs served upon the office of the Comptroller of the City of New York, a Notice of Claim, setting forth the time when, the place where and the manner

in which the claim arose; and that said notice of claim was served within ninety days of the date of occurrence herein.

6. More than thirty days has elapsed since the presentation of said notice of claim, and no adjustment or payment has been made by defendants.
7. That on April 23, 2012, pursuant to General Municipal Law 50(h), a hearing was to be held at the office of the Comptroller.
8. This action has been started within one year and ninety days after the happening of the event upon which the claim is based.
9. At all times herein mentioned, defendant, **THE CITY OF NEW YORK** has established and maintains the defendant **NEW YORK CITY POLICE DEPARTMENT** as a department or agency of the defendant **THE CITY OF NEW YORK**.
10. At all times herein mentioned, defendants **THE CITY OF NEW YORK** and **THE NEW YORK CITY POLICE DEPARTMENT** employed the individual defendants **VINCENT LEE and KARIN MARTINEZ**.
11. At all times herein mentioned, defendants, **VINCENT LEE and KARIN MARTINEZ** were duly appointed and acting police officers of the City of New York.
12. At all times herein mentioned the individual defendants were acting under the color of state law.
13. At all times herein mentioned, the individual defendants were acting in their individual and official capacity as employees of defendants **THE CITY OF NEW YORK** and **THE NEW YORK CITY POLICE DEPARTMENT**.
14. Notwithstanding their unconstitutional and unlawful conduct, the actions of the individual defendants were performed in the course of their duties and were incidental to their otherwise lawful function as agents, servants and employees of **THE CITY OF NEW YORK** and **THE NEW YORK CITY POLICE DEPARTMENT**.

15. At all times herein mentioned, the individual defendants **VINCENT LEE and KARIN MARTINEZ** were employed by defendant **THE CITY OF NEW YORK** as police officers.
16. At all times herein mentioned, defendants **VINCENT LEE and KARIN MARTINEZ** were acting within the scope of their employment as police officers of **THE CITY OF NEW YORK**.
17. At all times herein mentioned, infant plaintiff, [REDACTED] was lawfully at or near 113 Madison Street, #6, New York, NY.
18. At all times herein mentioned, defendants **VINCENT LEE and KARIN MARTINEZ** appeared at the above mentioned location.
19. At all times herein mentioned, defendants **VINCENT LEE and KARIN MARTINEZ**, without just cause, physically intimidated and detained infant plaintiff.
20. On or about June 1, 2011, at or near 113 Madison Street, #6 New York, NY, defendants **VINCENT LEE and KARIN MARTINEZ** committed an assault and battery upon the infant plaintiff, [REDACTED] by falsely arresting, unlawfully intimidating, handcuffing with excessive force and pressure.
21. The assault and battery of infant plaintiff by defendants, **VINCENT LEE and KARIN MARTINEZ** was unprovoked, unwarranted and unjustified.
22. The defendants' conduct was wanton, reckless, malicious and exhibited a gross indifference to and wanton and reckless disregard for human life and safety and the rights of others and more particularly, the rights, life and safety of the plaintiff herein.
23. As a result of the assault and battery of infant plaintiff by defendants **VINCENT LEE and KARIN MARTINEZ**, infant plaintiff was injured both bodily and mentally, was made sick and suffered harm and pain.

24. By reason of the foregoing, plaintiff has been damaged by defendants in an amount of money which exceeds the jurisdictional limits of all lower courts for compensatory and punitive damages.

AS AND FOR A SECOND CAUSE OF ACTION

ON BEHALF OF INFANT PLAINTIFF W [REDACTED] C [REDACTED]

25. Plaintiff repeat, reiterates and realleges each and every allegation hereinabove contained in paragraphs "1" through "24" inclusive with the same force and effect as if hereinafter set forth at length.
26. On or about June 1, 2011, at the aforementioned location, defendants **VINCENT LEE and KARIN MARTINEZ** arrested the infant plaintiff.
27. Defendants **VINCENT LEE and KARIN MARTINEZ** thereupon had the infant plaintiff detained for a period of time.
28. The charge placed against the infant plaintiff by defendants **VINCENT LEE and KARIN MARTINEZ** were false.
29. The arrest of the infant plaintiff was made by defendants, **VINCENT LEE and KARIN MARTINEZ** without any warrant or other legal process directing or authorizing the seizure, arrest or detention of the plaintiff.
30. The arrest of the infant plaintiff was made by defendants **VINCENT LEE and KARIN MARTINEZ** without the consent of the infant plaintiff.
31. The infant plaintiff was aware of his arrest and imprisonment by defendants **VINCENT LEE and KARIN MARTINEZ**
32. As a result of the foregoing, the plaintiff was subjected to the humiliation and indignities of arrest, detention and imprisonment and was subjected to emotional and physical distress.
33. By reason of the foregoing, the plaintiff has been damaged by defendants in an amount of money which exceeds the jurisdictional limits of all lower courts for compensatory and

punitive damages.

AS AND FOR A THIRD CAUSE OF ACTION

ON BEHALF OF INFANT PLAINTIFF W [REDACTED]

34. Plaintiff repeats, reiterates and realleges each and every allegation hereinabove, contained in paragraphs "1" through "33", inclusive with the same force and effect as if hereinafter set forth at length.
35. The above described acts of defendants were committed under the color of state law.
36. The above described acts of defendants were committed under color of their authority as police officers vested under and by virtue of the laws of the State of New York.
37. As a result of the above described acts of defendants committed under color of state law, the Infant plaintiff was deprived of his civil rights.
38. By reason of the foregoing, the plaintiff is entitled to damages under 42 U.S.C. §1981, §1983, §1985 and §1986.
39. By reason of the foregoing, the plaintiff has been damaged by defendants in an amount of money which exceeds the jurisdictional limits of all lower courts for compensatory and punitive damages.

AS AND FOR A FOURTH CAUSE OF ACTION

ON BEHALF OF INFANT PLAINTIFF W [REDACTED]

40. Plaintiff repeats, reiterates and realleges each and every allegation hereinabove in paragraphs "1" through "39", inclusive with the same force and effect as if hereinafter set forth at length.
41. The injuries sustained by the infant plaintiff were due to the negligent and reckless acts of the defendants in using an excessive amount of force.
42. By reason of the foregoing, infant plaintiff was greatly injured, both bodily and mentally,

and suffered great emotional and nervous distress; plaintiff was greatly humiliated, embarrassed and mortified, and plaintiff was subjected to ridicule, scorn and derision of friends, acquaintances and the public.

43. By reason of the foregoing the plaintiff has been damaged by defendants, in an amount of money which exceeds the jurisdictional limits of all lower courts for compensatory and punitive damages.

AS AND FOR A FIFTH CAUSE OF ACTION

ON BEHALF OF INFANT PLAINTIFF [REDACTED]

44. Plaintiff repeats, reiterates and realleges each and every allegation hereinabove in paragraphs "1" through "43", inclusive with the same force and effect as if hereinafter set forth at length.

45. Defendants **THE CITY OF NEW YORK** was negligent, careless and reckless in the hiring, supervising employing & retention of its agents, servants and/or employees as police officers, including defendants.

46. As a result of the defendant **THE CITY OF NEW YORK's** negligence, infant plaintiff was injured.

47. Infant plaintiff's injuries were caused wholly and solely by defendants without any negligence in the part of the plaintiff contributing thereto.

48. As a result thereof, infant plaintiff has been damaged in an amount of money that exceeds the jurisdictional limits of all lower courts for compensatory and punitive damages.

AS AND FOR A SIXTH CAUSE OF ACTION

ON BEHALF OF INFANT PLAINTIFF [REDACTED]

49. Plaintiff repeats, reiterates and realleges each and every allegation hereinabove in paragraphs

- "1" through "48", inclusive with the same force and effect as if hereinafter set forth at length.
50. As a result of the foregoing, defendants deprived infant plaintiff of the right to be free from unreasonable search and seizures secured by the Constitution and the laws of the United States and the 4th and 14th Amendments.
51. As a result of the aforementioned, the defendants deprived infant plaintiff of his right to liberty with due process of law.
52. As a result of the aforementioned, defendants deprived infant plaintiff of his equal protection under the law.
53. The actions of defendants, including failing to provide infant plaintiff with medical care, were unreasonable, unnecessary, improper, excessive and not justified under any circumstances including failing to provide infant plaintiff with medical care.
54. The aforementioned acts of the defendants were intentional, willful, malicious, performed in reckless disregard for and deliberate indifference to infant plaintiff's rights and physical well-being and violated infant plaintiff's constitutional rights.
55. As a result thereof, infant plaintiff has been damaged in an amount of money that exceeds the jurisdictional limits of all lower courts for compensatory and punitive damages.

AS AND FOR A SEVENTH CAUSE OF ACTION

ON BEHALF OF INFANT PLAINTIFF [REDACTED]

56. Plaintiff repeats, reiterates and realleges each and every allegation hereinabove in paragraphs "1" through "55", inclusive with the same force and effect as if hereinafter set forth at length.
57. As a result of the foregoing, defendants individually and or vicariously, by and through their agents, servants and/or employees, intentionally, wantonly, recklessly, carelessly and/or negligently engaged in extreme and outrageous conduct measured by the bounds of decency

tolerated by society thereby inflicting emotional and mental harm and distress upon infant plaintiff.

58. As a result thereof, infant plaintiff has been damaged in an amount of money that exceeds the jurisdictional limits of all lower courts for compensatory and punitive damages.

AS AND FOR AN EIGHTH CAUSE OF ACTION

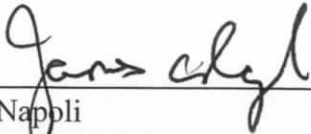
ON BEHALF OF WAI-WAI CHOI

59. Plaintiff, **WAI-WAI CHOI**, repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "58", herein as though set forth at length herein.
60. That at all times herein mentioned, plaintiff, **WAI-WAI CHOI**, was the mother of the Infant plaintiff, [REDACTED] and as such was entitled to the society, services and consortium of her son, [REDACTED]
61. That by reason of the foregoing, plaintiff, **WAI-WAI CHOI**, was deprived of the society, services and consortium of the infant plaintiff, [REDACTED]
62. That by reason of the foregoing, plaintiff, **WAI-WAI CHOI**, was damaged in a sum of money having a present value that exceeds the jurisdictional limits of all lower courts which would otherwise have jurisdiction of this matter.

WHEREFORE, Plaintiffs demand judgment against the Defendants herein on all causes of action, in a sum exceeding the jurisdictional limits of all lower courts which would otherwise have jurisdiction, together with the costs and disbursements of this action.

Dated: :New York, NY
Feb 8, 2013

Yours, etc.
Caesar & Napoli



James C. Napoli
Attorneys for Plaintiffs
W [REDACTED] and WAI-WAI CHOI
350 Broadway, 10th Floor

New York, NY 10013
212-226-2100
Our File No. B30369.JNQQ

PLAINTIFF'S VERIFICATION

STATE OF NEW YORK

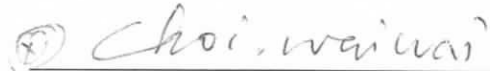
SS:

COUNTY OF NEW YORK

WAI-WAI CHOI, being duly sworn, says:

I am a Plaintiff in the action herein: I have read the annexed **COMPLAINT** and know the contents thereof, and the same are true to my knowledge, except those matters therein which are stated to be alleged upon information and belief, and as to those matters I believe them to be true. My belief as to those matters therein not stated upon knowledge, is based upon facts, records, and other pertinent information contained in my personal files.

Dated: New York, NY
February 8, 2013


WAI-WAI CHOI

Sworn to before me this 12 day
of February, 2013


Notary Public
ANGONA TRAN
Notary Public, State of New York
No. 01TR0268818
Qualified in Kings County
Commission Expires 09/17/2016